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REMARKS

Claims 1-39 are pending in this application. Claims 1, 20, 26, and 30 are amended. Reconsideration in view of the following remarks is respectfully requested.

Applicant initially asserts the finality of the Office Action is improper because it does not provide a proper basis for the rejection of claim 29. In particular, on page 11, the Office Action alleges, "Regarding claim 29, Maggenti discloses a method..." However, the Office Action does not provide a statutory basis for citing Maggenti et al. In fact, the Office Action expressly states on page 16 that Maggenti et al. is prior art made of record and "not relied upon." Thus, the finality is improper because the Office Action does not provide a statutory basis for Maggenti et al. and does not provide a proper basis for the rejection of claim 29.

The Office Action rejects, under 35 U.S.C. § 112, first paragraph, claims 1, 20, 26, and 30 as failing to comply with the written description requirement. This rejection is respectfully traversed. While Applicant believes the claims are supported by the original application, claims 1, 20, 26, and 30 are amended back to their original form to put the application in better condition for allowance and/or reduce the issues for appeal. Accordingly, Applicant requests the withdrawal of the rejection under 35 U.S.C. § 112.

The Office Action maintains the rejection, under 35 U.S.C. § 102, of claims 1-8, 11-18, and 20-39 over Crockett et al. (U.S. Patent No. 6,781,963). The Office Action also maintains the rejection, under 35 U.S.C. § 103, of claims 9-10 and 19 over Crockett et al. and Dailey (U.S. Patent No. 6,449,491). These rejections are respectfully traversed.

Applicant notes that the pending claims are now the same as the claims submitted with the September 3, 2005 Amendment. Applicant further notes that the October 17, 2005 Office Action never properly responded to Applicant's arguments. In particular, The October 17, 2005 Office Action only stated that Applicant's arguments are "moot in view of the new ground(s) of rejection." However, no new ground of rejection was asserted. Thus, Applicant reasserts the arguments below and asserts the arguments were persuasive because the Office Action could not properly address the arguments.

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Applicants assert that Crockett et al. does not disclose or suggest selecting a push-to-talk session unavailability mitigation based on the push-to-talk metric, as recited in independent claim 1 and similarly recited in independent claim 30.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" (MPEP §2131, citing *Verdegual Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

Crockett et al. discloses a method in a communication device for terminating a member from a group call in a group communication network (col. 2, lines 24-29). There is no disclosure of selecting a push-to-talk session unavailability mitigation based on the push-to-talk metric. In fact, Crockett et al. discloses the exact opposite of selecting a push-to-talk session unavailability mitigation based on the push-to-talk metric. In particular, Crockett et al. discloses initiating call termination based on media flow inactivity. This is describing simply ending a call based on a period of inactivity. Terminating a call is the exact opposite of session unavailability mitigation. More particularly, terminating a call hardly mitigates an unavailability of a session because terminating a call exasperates the unavailability of a session by causing the session to no longer be available. Consequently, because Crockett et al. discloses terminating a call, Crockett et al. discloses the opposite of and teaches away from mitigating the unavailability of a session.

Thus, Crockett et al. does not disclose or suggest selecting a push-to-talk session unavailability mitigation based on the push-to-talk metric, as recited in independent claim 1 and similarly recited in independent claim 30.

Furthermore, Crockett et al. does not disclose both monitoring push-to-talk usage and determining a push-to-talk metric based on push-to-talk usage, as also recited independent claim 1 and similarly recited in independent claim 30. The section of Crockett et al. cited by the Office Action only discloses initiating call termination based on media flow inactivity. If the Office Action is alleging media flow inactivity is push-to-talk usage, there is no section of Crockett et al. that discloses determining a push-to-talk metric based on the push-to-talk usage. If the Office Action is alleging media flow inactivity is a push-to-talk metric, there is no section of Crockett et al. that discloses monitoring push-to-talk usage. In particular, Crockett et al. does not disclose both monitoring push-to-talk usage and determining a push-to-talk metric based on push-to-talk

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usage. To elaborate, claims 1 and 30 clearly recite two separate steps and two separate elements relating to the two elements of usage and a metric. Crockett et al. does not disclose these two elements or steps with "media flow inactivity." Furthermore, if the Office Action is alleging "producing usage information" in col. 8, line 64 satisfies the claimed elements, Applicants assert there is no disclosure of selecting a push-to-talk session unavailability mitigation based on that information.

Therefore, Crockett et al. does not disclose both monitoring push-to-talk usage and determining a push-to-talk metric based on push-to-talk usage, as recited independent claim 1 and similarly recited in independent claim 30.

Crocket et al. also does not disclose or suggest comparing a push-to-talk usage metric to a threshold based on the usage of the mobile communications device by a user, as recited in independent claim 20.

According to Crockett et al., the RD 'may make a decision' at col. 13 line 63. However, the alleged metrics, "loading and availability of the MCUs" are based on network behavior, not user behavior. Accordingly, Crockett et al. does not disclose or suggest comparing a push-to-talk usage metric to a threshold based on the usage of the mobile communications device by a user.

Crockett et al. further does not disclose modifying a push-to-talk metric based on a parameter of operation of a push-to-talk session, as also recited in independent claim 20.

While Crockett et al. does disclose monitoring call activity at col. 8 line 63, Crockett et al. does not disclose modifying a push to talk metric based on it. The Office Action cites, as an example of modifying, the storing user of data records (UDRs) on the usage data server (UDS) in col. 9 lines 8 -19. Two types of usage log records (ULRs) are mentioned in Crockett et al.: 'cumulative participation time' in col. 8 line 36, and 'total number of seconds the participant held the flow' in col. 8 line 37-38. However, Crockett et al. does not describe selecting, establishing, or modifying based on these alleged metrics as the basis for session unavailability mitigation. Thus, Crockett et al. does not disclose the features recited in independent claim 20.

Furthermore, Crockett et al. does not disclose or suggest monitoring at least one metric of push-to-talk operation of the mobile communication device, the metric of push-to-talk operation being based on the usage of the mobile communication device by a user of the mobile

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communication device, modifying a push-to-talk mitigation parameter based on the at least one metric of push-to-talk operation of the mobile communication device, and reconfiguring at least one push-to-talk session unavailability mitigation based on the modified push-to-talk mitigation parameter, as recited in independent claim 26.

Not only does Crockett et al. not disclose the claimed features, Crockett et al. teaches away from a push-to-talk session unavailability mitigation based on a modified push-to-talk mitigation parameter, which is based on a metric of push-to-talk operation. Crockett et al. teaches away from the features because Crockett et al. discloses the exact opposite of selecting a push-to-talk session unavailability mitigation based on the push-to-talk metric. In particular, Crockett et al. discloses initiating call termination based on media flow inactivity. This is describing simply ending a call based on a period of inactivity. Terminating a call is the exact opposite of session unavailability mitigation. More particularly, terminating a call hardly mitigates an unavailability of a session because terminating a call exacerbates the unavailability of a session by causing the session to no longer be available. Because Crockett et al. discloses terminating a call, Crockett et al. discloses the opposite of and teaches away from mitigating the unavailability of a session.

Thus, Crockett et al. does not disclose or suggest monitoring at least one metric of push-to-talk operation of the mobile communication device, the metric of push-to-talk operation being based on the usage of the mobile communication device by a user of the mobile communication device, modifying a push-to-talk mitigation parameter based on the at least one metric of push-to-talk operation of the mobile communication device, and reconfiguring at least one push-to-talk session unavailability mitigation based on the modified push-to-talk mitigation parameter, as recited in independent claim 26.

Therefore, Applicants respectfully submit that independent claims 1, 20, 26, and 30 define patentable subject matter. The remaining claims depend from the independent claims and therefore also define patentable subject matter. Accordingly, Applicants respectfully request the withdrawal of the rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103.

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CONCLUSION

Based on the foregoing amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Favorable consideration and prompt allowance of claims 1-39 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

The Commissioner is hereby authorized to deduct any fees arising as a result of this Amendment or any other communication from or to credit any overpayments to Deposit Account No. 50-2117.

Respectfully submitted,



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